

REMARKS

In the Office Action mailed October 29, 2004, the Examiner rejected claims 1, 3-9 and 15-25. Applicants have amended claims 1 and 3 to include the subject matter of now cancelled claims 8 and 9. By way of the foregoing amendments and the markings to show changes Applicant believe that Examiner has not made a sufficient showing of lack of novelty or obviousness in view of the prior art of record. The foregoing amendments are taken in the interest of preparing the application for appeal, per 37 C.F.R. §1.116(b), and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art. Applicants intend to make a final determination of appeal upon receipt of any Advisory Action or other correspondence received by the USPTO.

Rejection under 35 U.S.C. §112, second paragraph

Examiner has rejected claims 3 and 15-20 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, Examiner indicates that the phrase "said inner wall of said haptic" lacks antecedent basis. Without acquiescing to the Examiner's assertions, Applicant has amended claim 3 to include the following underlined portion: "providing an implant having at least one arcuate haptic defining an inner wall". In view of the foregoing amendment, Applicant believes that the rejections to claims 3 and 15-20, under 35 U.S.C. §112, second paragraph, is now rendered moot.

Rejection under 35 U.S.C. §102(e) and §103(a)

Examiner has rejected claims 1, 4-9 and 21-25 under 35 U.S.C. §102(e) in view of U.S. Patent No. 6,152,959 and has rejected claims 3 and 15-20 under 35 U.S.C. §103(a) based upon U.S. Patent Nos. 4,836,202, 4,542,541 and 4,494,254. Without acquiescing to the Examiners rejection, Applicants have amended claims 1 and 3 to include: "wherein each of said eyelets includes an aperture defined by an arm that depends from said haptic and folds over upon itself, and wherein a notch is defined at said arm for guiding a securing member into said eyelet".

At the onset, the Applicants note that none of the references cited by the Examiner teaches or suggest a haptic having at least one eyelet that is defined by a free end of an arm that is substantially abuttingly adjoined to an inner wall of the haptic and is adapted to be separated from the inner wall. The Examiner asserts that this feature is taught by U.S. Patent No. 6,152,959, to Portney and U.S. Patent No. 4,542,541 to Pannu. More specifically, the Examiner asserts without technical basis, that the **'gap'** of the Portney patent, which is adapted for receiving a portion of an iris, and the **'spaced configuration'** of the Pannu patent, which is at the free end of the haptic, is an **'abuttingly adjoined'** relationship of the arm and inner wall of the present invention. This is incorrect. At best, the Portney patent teaches a fixation member having a pre-formed gap for receiving portions of the eye and Pannu teaches a haptic having a pre-formed spaced configuration or opening. Applicant is of the opinion that these features do not teach or suggest a substantially abuttingly adjoined relationship between a free end of an arm and the inner wall of a haptic.

Applicants are also of the opinion that the Portney patent fails to teach or suggest a haptic wherein each of the eyelets includes an aperture defined by an arm that depends from the haptic and folds over upon itself, and wherein a notch is defined at the arm for guiding a securing member into the eyelet.

Accordingly, since the cited references fail to teach all of the features of the claims, as described above, which are included in both independent claims 1 and 3, Applicant is of the opinion that claims 1 and 3 are in an allowable form. Likewise, dependent claims 4-7 and 15-25, which are dependent upon claims 1 or 3, are also believed to be in an allowable. The Examiner must properly support the rejection of each claim, including dependent claims. The Examiner has failed to do so in this instance.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants intend to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

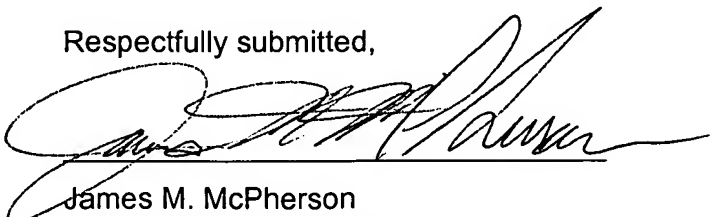
CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

Dated: Dec 28, 2004



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